

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL

Chairman

JIM IRVIN

Commissioner

MARC SPITZER

Commissioner

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|---|-----------------------------|
| IN THE MATTER OF THE GENERIC) | DOCKET NO. E-00000A-02-0051 |
| PROCEEDINGS CONCERNING ELECTRIC) | |
| <u>RESTRUCTURING ISSUES</u>) | |
| IN THE MATTER OF ARIZONA PUBLIC) | DOCKET NO. E-01345A-01-0822 |
| SERVICE COMPANY'S REQUEST FOR A) | |
| VARIANCE OF CERTAIN REQUIREMENTS OF) | |
| <u>A.A.C. R14-2-1606</u>) | |
| IN THE MATTER OF THE GENERIC) | DOCKET NO. E-00000A-01-0630 |
| PROCEEDINGS CONCERNING THE) | |
| INDEPENENT SCHEDULING) | |
| <u>ADMINISTRATOR</u>) | |
| IN THE MATTER OF TUCSON ELECTRIC) | DOCKET NO. E-01933A-02-0069 |
| POWER COMPANY'S APPLICATION FOR A) | |
| VARIANCE OF CERTAIN ELECTRIC) | |
| <u>COMPETITION RULES COMPLIANCE DATES</u>) | |

TRACK B REBUTTAL TESTIMONY

OF

ERNEST G. JOHNSON

DIRECTOR

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

NOVEMBER 18, 2002

SUMMARY
TRACK B REBUTTAL TESTIMONY
ERNEST G. JOHNSON
GENERIC ELECTRIC RESTRUCTURING DOCKET
DOCKET NO. E-00000A-02-0051, ET. AL.

My rebuttal testimony responds to APS witness Steven M. Wheeler and focuses on two issues: **Expedited Contract Approval** and **Price to Beat**.

I conclude that Expedited Contract Approval is unnecessary, inappropriate and is not in the public interest, and could result in rates that are not just and reasonable. This conclusion is bolstered by the fact that this process is occurring against a backdrop of a wholesale marketplace which is not workably competitive as determined by the Commission in Order #65154. If adopted, an expedited approval process may inadvertently relieve the utility of its responsibility to procure power in a prudent manner resulting in rates that are not just and reasonable. Also, an expedited approval process may short change or limit the Commission's opportunity to thoughtfully and completely examine both the process and the results emanating therefrom. Such a result would clearly not be in the public interest.

Turning to the issue of Price to Beat, Staff proposed the price to beat concept as a compromise position which would provide some cost recovery assurance to the utilities and merchants within certain parameters, while avoiding the pitfalls of pre-approval. From Staff's review of the testimony, it would appear that some parties perceive Staff's proposal as too problematic or undesirable.

Therefore, Staff respectfully withdraws its proposed Price to Beat and urges the Commission not to pre-approve or allow for Expedited Contract Approval.

Rejection of Expedited or Automatic recovery is necessary in order to protect ratepayers against significant unknown economic harm without adequate recourse.

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INTRODUCTION/SUMMARY

Q. Please state your name, occupation, and business address.

A. My name is Ernest G. Johnson, 1200 West Washington, Phoenix, AZ 85007.

Q. By whom are you employed and in what capacity?

A. I am employed by the Arizona Corporation Commission (“ACC” or “Commission”) as the Director of the Utilities Division.

Q. Briefly describe your responsibilities as Utilities Director.

A. I am responsible for the day to day operations of the utilities division, including policy development, case strategy and overall division management.

Q. Please summarize your educational background and professional experience.

A. In 1979 and 1982 respectively, I earned Bachelor of Science and Juris Doctorate degrees, both from the University of Oklahoma. I have been involved in the regulation of public utilities since 1986. I was employed by the Oklahoma Corporation Commission in 1986 in various legal capacities. In 1993, I was named acting Director and served in that position until mid 1994. I served as permanent Director from mid 1994 until October 2001. While serving in these capacities I have participated in numerous regulatory proceedings including providing policy analysis concerning Electric Restructuring before the Oklahoma Corporation Commission and Oklahoma State Legislature.

Q. Did you participate in the Track B workshops?

A. Yes, I attended and participated in each of the Track B workshops.

1 **Q. Are you sponsoring the Track B Staff Report, which was filed on October 25, 2002?**

2 A. Yes, I am one of three witnesses sponsoring the Track B Staff Report.

3
4 **Q. What is the purpose of your rebuttal testimony in this case?**

5 A. I respond to comments made by APS witness Steven M. Wheeler. In particular I address
6 the issues of expedited contract approval and the price to beat.

7
8 **EXPEDITED CONTRACT APPROVAL**

9 **Q. Have you reviewed the testimony of APS witness Steve Wheeler?**

10 A. Yes, I have.

11 **Q. Do you have any comments regarding his testimony?**

12 A. Yes, I do.

13 **Q. In his testimony (page 6, line 25 – page 7, line 11) Mr. Wheeler argues that the**
14 **Commission should approve the contracts resulting from the solicitation on an**
15 **expedited basis and that such approval should provide for full and timely cost**
16 **recovery. What is Staff's position on this issue?**

17 A. In Staff's opinion, expedited contract approval would not be in the public interest and is
18 unnecessary and inappropriate for this solicitation.

19 **Q. Why?**

20 A. While Staff is committed to assisting the Commission in its efforts to transition to and
21 facilitate a robustly competitive wholesale electric market in Arizona, this is not the time
22 to adopt an expedited approval process. Staff believes that expedited contract approval is

1 not a necessary component in facilitating a robustly competitive wholesale electricity
2 market. This is especially true when viewed against two facts:

- 3 1. A backdrop of a wholesale market place, which is not workably competitive as
4 determined by this Commission in Order # 65154,
- 5 2. And the level of risk that ratepayers would be required to assume under the APS'
6 proposal.

7 In Staff's opinion, adoption of the APS proposal could result in rates that are not just and
8 reasonable. Staff would not be opposed to reconsidering this issue in subsequent
9 solicitations.

10 In light of the oversupply of generation that currently exists in Arizona, Staff believes that
11 in-state generators will be compelled to bid for APS' contestable load. Also, out of state
12 suppliers may find the solicitation process amenable and APS' contestable load desirable.
13 Consequently, expedited approval simply is not required to attract bidders at this time. In
14 this case, it would appear that APS is simply seeking to shift the risk of cost recovery
15 away from itself on to consumers.

16
17 **Q. Could adoption of the APS proposal result in adverse consequences to consumers?**

18 A. Yes, if adopted an expedited approval process may, inadvertently relieve the utility of its
19 responsibility to procure power in a prudent manner resulting in rates that are not just and
20 reasonable. Such a result would clearly not be in the public interest.

21 It is my understanding that currently APS procures its required resources without ACC
22 expedited approval. It would appear that APS is able to meet its service obligation and

1 remain financially viable. In Staff's opinion, APS has not made a compelling showing to
2 support expedited approval.

3 Staff's proposal in Track B leaves the utility with the ultimate decision-making authority
4 regarding its needs and the ultimate responsibility to act prudently.

5
6 **Q. Are there other concerns with Expedited or Pre-Approval Processes?**

7 Yes, in Staff's opinion, utilities must have sufficient incentive to procure power in a
8 prudent manner on behalf of its customers. An expedited or pre-approval process may
9 eliminate prudency reviews, a very necessary incentive.

10
11 **Q. Do you have any further thoughts on this matter?**

12 A. Yes, in Staff's opinion an expedited approval process may short change or limit the
13 Commission's opportunity to thoughtfully and completely examine both the process and
14 the results emanating therefrom. I would think that in the initial solicitation the
15 Commission would decide to retain utmost flexibility such that it is not limited in its
16 abilities to effectuate remedies or make course adjustments as may be necessary. This
17 would seem most appropriate based upon the fact that this will be the first time that the
18 Commission has ventured down this path. Retaining flexibility would seem to be critical
19 at this juncture.

20
21 **Q. Do you think expedited approval is necessary for competition to develop and**
22 **succeed?**

1 A. Not in my opinion. It has been my observation that industries that are competitive operate
2 effectively without guarantees of cost recovery. For example, when an automobile
3 manufacturer enters into a contract to buy parts from a supplier neither the manufacturer
4 nor the supplier has any guarantee that the cost of the contract will be recovered. In spite
5 of this uncertainty, competition is quite vibrant within the highly capital intensive
6 automobile industry.

7
8 **PRICE TO BEAT**

9 **Q. Can you explain the genesis of the Staff's "Price to Beat" concept?**

10 A. As more fully discussed in the testimony of Staff witness Alan Kessler, the price to beat
11 was a compromise proposed by Staff. During the workshops, it was apparent that the
12 utilities and merchants favored expedited review or pre-approval of their power
13 agreements. Staff proposed the price to beat concept as a compromise position: that
14 would provide some assurance to the utilities and merchants within certain parameters
15 while avoiding the pitfalls of pre-approval.

16
17 **Q. At page 8, lines 13-24 of his testimony, Mr. Wheeler criticizes Staff's intent not to**
18 **disclose the price to beat. Can you comment on this?**

19 A. First, I would like to point out that Mr. Wheeler's assertion that the price to beat could be
20 revealed at some "...future moment to support disallowance of power costs for which the
21 utility was already contractually committed..." is not consistent with Staff's position.
22 Staff believes that revealing the price to beat before contracts are executed could adversely
23 influence bids and that disclosure subsequent to bidding but before contracting could

1 possibly skew the selection process. Staff did not view either possible outcome as
2 desirable or consistent with the public interest.

3
4 **Q. Are there any changes to the price to beat concept that you would like to propose?**

5 A. Yes, as indicated in Staff testimony, the price to beat was put forward as an
6 accommodation or compromise to address the concerns expressed by the utilities and
7 merchants. It was the Staff equivalent of an ‘olive branch.’ It would appear that to some
8 parties Staff’s proposal is too problematic or undesirable.

9 Therefore, at this time the Staff respectfully withdraws its proposed price to beat and
10 would urge the Commission not to pre-approve or provide for expedited contract approval
11 because such a course of action could subject ratepayers to significant unknown economic
12 harm without adequate recourse.

13 **Q. Does this conclude your testimony?**

14 A. Yes, it does.

15